

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

2016 JUN -9 PM 4:11

TIMMY A. DAWSON,

Petitioner,

V.

LORIE DAVIS, Director,

Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

DEPUTY CLERK YMA

CIVIL ACTION NO.

1:16-CV-071-BL

Assigned to U.S. Magistrate Judge

REPORT AND RECOMMENDATION

This case has been referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b) and a standing order of reference from the district court.

I. BACKGROUND

Petitioner, an inmate currently incarcerated in the Texas Department of Criminal Justice,, filed a petition for habeas corpus relief under 28 U.S.C. § 2254 and a motion to proceed *in forma pauperis* (IFP) with the required certificate of trust account. (Docs. 3, 4.). On May 4, 2016, the Court issued an order finding that the petitioner had sufficient assets with which to pay the \$5.00 filing fee and giving him thirty days to pay it. (Doc. 5). The order warned that failure to do so could result in a formal recommendation that IFP status be denied and that the case be dismissed. *Id.* As of the date of this report, the petitioner has still not paid the filing fee.

II. IN FORMA PAUPERIS

Whether to permit or deny an applicant to proceed *in forma pauperis* is within the sound discretion of the Court. *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988); 28 U.S.C. § 1915(a). Courts should make the assessment of financial ability after considering whether payment of the filing fee will result in the plaintiff “suffering undue financial hardship.” *Prows*, 842 F.2d at 140.

"This entails a review of other demands on individual plaintiffs' financial resources, including whether the expenses are discretionary or mandatory." *Id.*

Here, the petitioner's trust fund account statement shows a balance of \$72.70 as of the date of its preparation, total deposits of \$350.00 over the prior three months, and total deposits of \$700.00 over the prior six months. He has not shown that he has any demands on his financial resources or that he will suffer undue financial hardship after payment of the \$5.00 filing fee for this habeas action.

III. RECOMMENDATION

The petitioner's application to proceed *in forma pauperis* should be denied. He should be ordered to pay the \$5.00 filing fee within **Fourteen (14)** days of the date of any order accepting this recommendation and warned that if he does not pay the fee, the case will be subject to dismissal without further notice.

A copy of this Report and Recommendation shall be served on all parties in the manner provided by law.

Any party may object to this Report and Recommendation. A party who objects to any part of this Report and Recommendation must file specific written objections within fourteen (14) days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and identify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. The failure to file specific written objections will bar the aggrieved party from attacking on appeal the factual findings, legal conclusions, and recommendation set forth by the magistrate judge that are accepted or adopted

by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superceded by statute on other grounds*, 28 U.S.C. § 631(b)(1) (extending the time to file objections from ten to fourteen days), *as recognized in ACS Recovery Servs., Inc. V. Griffin*, 676 F.3d 512, 521 n. 5 (5th Cir. 2012).

SO ORDERED.

Dated June 9, 2016.



E. SCOTT FROST
UNITED STATES MAGISTRATE JUDGE